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SUBJECT: CONSTITUTIONAL COURT CHIEF JUSTICE DISCUSSES ROLE OF CONSTITUTION, RELIGION

¶11. Summary: In a May 8 meeting with Ambassador, Constitutional Court Chief Justice Mustafa Bumin discussed his views on: the ruling AK Party; the threat of Islamic fundamentalism in Turkey; the role of the Constitution in a State of law; and the recent law lowering the retirement age for civil servants. Bumin is scheduled to visit the U.S. May 17-31 for a series of meetings in Washington, D.C. and San Francisco. His comments provide insight into his views. End Summary.

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Court Blocks Retirement Law  
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¶12. Bumin told Ambassador the Constitutional Court announced May 8 it had stopped the implementation of the new law lowering the retirement age for civil servants from 65 to 61. He said the Court reached this decision because: 1) there should be a transition period to allow workers to make retirement plans, since for years they expected and planned for retirement at 65, and 2) this law improperly transfers powers from the legislative branch to the executive by permitting the terms of selected civil servants -- such as governors, ambassadors, and undersecretaries -- to be extended by the Cabinet. These decisions would be subjective. The personnel rights of civil servants in Turkey are regulated by law. The Court decided to stop implementation of the law because a decision to annul the law would have taken 4-5 months to carry out, whereas a decision to stop implementation takes effect as soon as it is published in the Official Gazette. Bumin quipped that the decision is a "gift" for Turkish Ambassador to the U.S. Logoglu, who would have had to retire under the new law (Note: Bumin's wife is a good friend of Mrs. Logoglu. End Note). In general, he said, the Court blocks implementation of laws when there is a high probability the law will be annulled, and when it is clear that the consequences of implementation would be difficult to address after the fact.

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Yes to Free Speech, No to "Fundamentalism"  
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¶13. Bumin defined himself as a "humanist" and said when he was elected Court Chairman he told his colleagues they were all free to express their views, but he would not tolerate fighting. He has studied decisions of the U.S. Supreme Court and the European Court of Human Rights (ECHR), and noticed many similarities. One common thread is the belief that an idea can be controversial, even shocking, but its expression must be tolerated. Bumin said his ideas have changed repeatedly over the course of his life, as is natural.

¶14. Ambassador noted that Ataturk had challenged many conventional ideas, but after Ataturk's death many of his followers determined such challenges unacceptable. Bumin said Turkey enjoys "the best form of secularism." Two years ago, the ECHR President came to visit him. At that time, the ECHR was preparing to review an appeal of the GOT's 1998 decision to close the Islamist Refah Party. Bumin said he explained to the ECHR President that while Europe had long ago eliminated the influence of religion in politics, Turkey could not. Unfortunately, he asserted, there are people in Turkey actively seeking to exploit religious feeling for political ends. In addition, Turkey's Islamic neighbors to the south and east promote fundamentalism in Turkey. The GOT shut down Refah because, Bumin opined, it had become a center of anti-secular activities, including by promoting Sharia law. He explained the danger of religious fundamentalism in Turkey, and urged the ECHR not to be naive when it reviewed the case. If the ECHR ruled against the closure, it would bear the responsibility if Turkey drifted toward Islamic fundamentalism. Later, Bumin and the other Court justices

visited the ECHR in Strasbourg and exchanged views. Their efforts bore fruit when the ECHR ruled in 2001 to reject Refah's appeal. If the ruling had gone the other way, the consequences would have been very bad, Bumin claimed. In general, Bumin said he does not like closing parties. However, both the Constitution and the Political Parties law require closure in certain cases. Under a recent constitutional amendment, the Constitutional Court has the authority to amend the Political Parties Law. The Court is now reviewing the Law and will likely cancel many articles.

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Bumin: AK Lacks Experience, Understanding  
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15. Bumin said ruling AK Party leaders do not understand yet how the State works, but we must not lose hope in them. He said he has told both PM Erdogan and Speaker of Parliament Arinc that more than half the votes for AK in the November elections were protest votes, rather than votes from loyal AK supporters. As an Islam-oriented party, AK can play a valuable role in power if it respects the principles of the secular Republic. If it does not, however, the consequences will be terrible. Unlike in some other countries, you don't need a specific education to enter government in Turkey. In France, for example, graduates of the National School of Administration run the country. There is also a problem with the concept of merit. The personnel law in Turkey requires that certain government officials have certain qualifications. Unfortunately, there are no such requirements for being elected to the Turkish Parliament, he added.

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The Role of the Constitution in a State of Law  
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16. Ambassador asked about the prospects of the GOT drafting a new Constitution, rather than making piecemeal amendments to the existing one. Bumin noted that the current Constitution was drafted in 1982, under the influence of the military, which had staged a coup in 1980. Its authoritarian nature was a reaction to the freedoms of the previous Constitution, drafted in 1961. He said he gave a speech on April 25, the 41st anniversary of the Constitutional Court, in which he stressed that the Constitution should not be amended for special situations. In other words, if you cannot accomplish something by changing a law, you should not try to achieve that end by amending the Constitution. The Constitutional Court can oversee constitutional amendments only from a procedural point of view -- i.e. whether the amendment was adopted according to procedures. The Court cannot review the contents. Some people therefore might try to use the constitutional amendment process instead of the normal legislative process, where the Court can review the actual content. In a state of law, you cannot change the Constitution in order to evade Constitutional Court control. Bumin said that when he made these comments during his speech, he looked directly at Erdogan, Arinc, President Sezer, and Justice Minister Cicek. He said AK could use its majority in Parliament to change laws, but unless these laws comply with international norms they cannot become legally binding.

17. Ambassador asked Bumin for his reaction to recent comments by Arinc that seemed to imply that natural law, or parliamentary authority, might be above the Constitution. Bumin noted that Arinc is a lawyer, and said he did not believe Arinc intended his words to have that meaning. Article 2 of the Constitution states that Turkey is a state of law. There are certain things that cannot be changed.

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Comment  
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18. Bumin sincerely believes himself to be an advocate of a state of law, but his comments reveal how incomplete that concept is in Turkey. We request that interlocutors for Bumin's upcoming visit be informed about his views, but equally try to draw him out on key issues in order to stimulate his thinking.

